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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 964.

THE UNITED STATES, APPELLANTS, vs. FREDERICK M. LYNDE.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 11, 1877.

SUPREME COURT OF THE UNITED STATES.

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INDEX.

	Original.	Print.
Original petition	1	1
Completed petition	2	1
Traverse	3	2
Plea of limitation	4	3
Final judgment	5	3
Application for allowance of appeal	6	3
Order allowing same	6	3
Findings of fact and conclusions of law	7	4
Certificate	10	4

1 United States Court of Claims.

FREDERICK M. LYNDE
v.
THE UNITED STATES. } No. 10733. Filed Dec. 11, 1875.

To the Honorable Court of Claims:

The petition of Frederick M. Lynde, an officer in the Army of the United States.

From the 28th day of July, A. D, 1866, to the 10 day of Dec., A. D. 1875, the claimant was a lieutenant of infantry in the Army of the United States. During a part of said period of time one-half of the pay and allowances due to the claimant as such officer from the United States was withheld for the alleged reason that he had been ordered home to await orders, at his own request, and was, therefore, virtually on leave of absence, and during the same time certain mileage and commutations of fuel and quarters due to the claimant from the United States, for a part of said period of time, were never paid.

The claimant, being unable to obtain a sufficient examination of the papers of the War Department relating thereto, cannot set forth with precision the amounts so unpaid, and therefore prays the court to request the honorable Secretary of War to furnish a statement of the same.

No assignment or transfer of said claim, or of any part thereof, or of any interest therein, has been made, and no action thereon has been had by Congress or any of the Departments, except as herein stated. The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets.

He is a citizen of the United States, an officer of the Army of the United States, and has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided or abetted, or given encouragement to rebellion against said Government. He demands judgment against the United States for such sum as shall be found due to him by reason of the premises.

PAINE & GRAFTON,
Claimant's Attorney.

DISTRICT OF COLUMBIA, *ss:*

Benjamin F. Grafton, having been duly sworn, says that he is the attorney of the claimant named in the foregoing petition, and believes the facts therein stated to be true.

Sworn and subscribed before me by B. F. Grafton this 11th day of Dec., A. D. 1875.

ARCHIBALD HOPKINS,
Ch. Clerk Court of Claims.

2 United States Court of Claims.

FREDERICK M. LYNDE
vs.
THE UNITED STATES. } No. 10733.

Claimant's petition.—Filed Nov. 25, 1876.

To the Honorable Court of Claims:

The claimant was a lieutenant of infantry in the Army of the United States from Mch. 22, 1870, to May 10, 1870. Upon the consolidation

of the Army under the act of March 3, 1869, he was ordered home to await orders, and thereupon left his post at Fort Rice, D. T., and proceeded to his home at Baltimore, Md., and remained awaiting orders from Mch. 22, 1870, until May 10, 1870, both days inclusive.

During said period of time the defendant furnished no quarters, and had no public quarters which could be furnished to the claimant at said Baltimore, and the claimant was entitled under section 37 of the act of July 28, 1866, and sections 1068, 1080, and 1081 of the Army Regulations to commutations for $1\frac{7}{2}$ cords of wood, at the rate of $4.93 per cord, amounting to $9.38; also to commutations for quarters for 1 month and 19 days at the rate of $36 per month, amounting to $56. No part of said commutations of fuel and quarters has ever been paid. There is due to the claimant from the defendant, by reason of the premises, the sum of $65.38.

No action has been had by any of the Executive Departments, or by Congress, on this claim, of which the claimant is the sole owner; and no assignment or transfer of the same, or of any part thereof, or interest therein, has ever been made. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government of the United States, and has not in any way aided, abetted, or given encouragement to rebellion against the said Government; and he is justly entitled to the amount of this claim, after allowing all just credits and offsets.

The claimant demands judgment against the United States for the sum of $65.38.

PAINE & GRAFTON,
Claimant's Attorneys.

THE DISTRICT OF COLUMBIA, *ss:*

Benjamin F. Grafton, having been duly sworn, says that he is one of the attorneys of the claimant named in the foregoing petition, and believes the facts as stated in said petition to be true.

B. F. GRAFTON.

Sworn and subscribed before me by B. F. Grafton this 24 day of November, 1876.

WM. PEIRCE BELL,
Notary Public.

Claimant's post-office address, Baltimore.
Post-office address of claimant's attorney, Washington, D. C.

3 In the Court of Claims of the United States. December term, A. D. 1875.

FREDERICK M. LYNDE
vs.
THE UNITED STATES. } No. 10733.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of sixty-five dollars and thirty-eight cents, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney-General.

Filed Nov. 28, 1876.

4 In the Court of Claims of the United States, December term, 1875.

FREDERICK M. LYNDE
vs.
THE UNITED STATES. } No. 10733.

Plea.

Now come the defendants, by their Attorney-General, and say that the claimant herein should not further have or maintain suit against the defendants, for the reason that the petition of the claimant was not filed in this court nor transmitted to it within six years after the claim therein set forth first accrued.

Wherefore the defendants ask judgment, &c.

THOMAS SIMONS,
Assistant Attorney-General.

Filed Dec. 14, 1876.

5 In the Court of Claims.

FREDERICK M. LYNDE
vs.
THE UNITED STATES. } 10733.

At a Court of Claims held at the Capitol, in the city of Washington, the 9th day of January, A. D. 1877, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Frederick M. Lynde, claimant, have and recover of and from the United States the sum of seventy-six dollars and ninety cents, ($76 $\frac{90}{100}$.)

By the court.

A true copy of record.

6 In the Court of Claims of the United States, Dec. term, 1876.

FREDERICK M. LYNDE
vs.
THE UNITED STATES. } No. 10733.

From the judgment rendered in the above-entitled cause on January 9, 1877, in favor of claimant, the defendants, by their Attorney-General, on the 10th day of January, 1877, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Asst. Attorney-General.

Filed January 10, 1877.

Ordered, That the appeal be allowed as prayed for.

By the court.

7 Court of Claims.

FREDERICK M. LYNDE
vs.
THE UNITED STATES. } No. 10733.

FINDINGS OF FACT.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

1. The claimant, being a lieutenant of infantry in the Army of the United States from May, 1869, was, by special field-orders, Headquarters of the Department of Dakota, July 22, 1869, ordered home to await orders, and left his post, Fort Rice, Dakota, July 27, 1869. He was on awaiting orders at Little Canada, Minn., Sept. 30, 1869, and at Baltimore, Md., in October, 1869; on reconstruction duty at Jackson, Miss., to December, 1869; conducting recruits from January 10 to
8 March 22, 1870, and from that date again awaiting orders to May 10, 1870, at Baltimore, Md. It does not otherwise appear where his home was.

2. While awaiting orders at Baltimore, from March 22 to May 10, 1870, the claimant did not apply for quarters or fuel, and there were no quarters at that place subject to the control of the Quartermaster's Department which could have been assigned to him. The rate allowed by the War Department for commutation of officers' quarters was $18 a room per month, and the lowest market-price for wood at Baltimore during said time was $5\frac{93}{100}$ per cord.

3. It does not appear that any reports were made by the claimant for the months of August and November, 1869. Nor does it appear
9 where were his whereabouts during those months, except so far as the same appear or may be inferred from the foregoing findings.

CONCLUSIONS OF LAW.

1. The claimant was entitled to commutation of fuel and quarters while awaiting orders at Baltimore from March 22 to May 10, 1870.

2. The commutation for quarters which he should recover is, for 2 rooms, 1 month and 18 days, at $18 per month each $57 60
And the commutation for fuel is for 1 month and 8 days, at 2 cords per month, and 10 days at $\frac{1}{2}$ cord per month, at $5.93 per cord 19 30

76 90

By the court.

10 In the Court of Claims.

FREDERICK M. LYNDE
vs.
THE UNITED STATES. } No. 10733.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the Attorney-General for defendants for the allowance of an appeal, as filed in the clerk's office January 10, 1877, and of the order

of the Court of Claims allowing the same, of the findings of fact by the court and conclusions of law thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this eleventh day of January, 1877.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk, Court of Claims.

(Indorsement on cover:) No. 964. The United States, appellants, vs. Frederick M. Lynde. Court of Claims. Filed 11th January, 1877.